

1 McGREGOR W. SCOTT
United States Attorney
2 VINCENTE A. TENNERELLI
Assistant United States Attorney
3 2500 Tulare Street, Suite 4401
Fresno, CA 93721
4 Telephone: (559) 497-4000
Facsimile: (559) 497-4099
5

6 Attorneys for Plaintiff
United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 HUU TIEU
15 Defendant.

CASE NO. 1:20-CR-00109-DAD-BAM
STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
AND ORDER
DATE: October 14, 2020
TIME: 1:00 p.m.
COURT: Hon. Barbara A. McAuliffe

16
17 This case is set for a status conference on October 14, 2020. On May 13, 2020, this Court issued
18 General Order 618, which suspends all jury trials in the Eastern District of California “until further
19 notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18
20 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s
21 judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after
22 May 2, 2021.¹ This and previous General Orders, as well as the declarations of judicial emergency,
23 were entered to address public health concerns related to COVID-19.

24 Although the General Orders and declarations of emergency address the district-wide health
25 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
26 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record

27
28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
2 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
5 findings on the record “either orally or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
7 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the
9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
10 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.
11 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of
12 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
13 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
18 week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d
19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
21 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
26 justice exception, § 3161(h)(7) (Local Code T4).² The government has produced 3,120 documents
27

28 ² The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

1 comprised of 23,772 pages. Counsel for defendant is reviewing these materials and believes that failure
2 to grant the above-requested continuance would deny him/her the reasonable time necessary for
3 effective preparation, taking into account the exercise of due diligence. If continued, this Court should
4 designate a new date for the January 25, 2021. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir.
5 2010) (noting any pretrial continuance must be “specifically limited in time”).

6 **STIPULATION**

7 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
8 through defendant’s counsel of record, hereby stipulate as follows:

9 1. By previous order, this matter was set for status on October 14, 2020.

10 2. By this stipulation, defendant now moves to continue the status conference until March
11 24, 2021, and to exclude time between October 14, 2020, and March 24, 2021, under 18 U.S.C.
12 § 3161(h)(7)(A), B(iv) [Local Code T4].

13 3. The parties agree and stipulate, and request that the Court find the following:

14 a) The government has produced 3,120 documents comprised of 23,772 pages that
15 includes investigative reports, recordings, electronic evidence, and other voluminous documents.

16 b) Counsel for defendant desires additional time to conduct investigation and
17 research related to the charges, to review discovery for this matter, and to discuss possible
18 resolutions with the government and the defendant.

19 c) Counsel for defendant believes that failure to grant the above-requested
20 continuance would deny him/her the reasonable time necessary for effective preparation, taking
21 into account the exercise of due diligence.

22 d) Counsel for defendant believes that failure to grant the above-requested
23 continuance would deny him/her the reasonable time necessary for effective preparation, taking
24 into account the exercise of due diligence.

25 e) The government does not object to the continuance.

26 4. Based on the above-stated findings, the ends of justice served by continuing the case as
27 requested outweigh the interest of the public and the defendant in a trial within the original date
28 prescribed by the Speedy Trial Act.

1 5. For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq.,
2 within which trial must commence, the time period of October 14, 2020 to March 24, 2021, inclusive, is
3 deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from
4 a continuance granted by the Court at defendant's request on the basis of the Court's finding that the
5 ends of justice served by taking such action outweigh the best interest of the public and the defendant in
6 a speedy trial.

7 6. Nothing in this stipulation and order shall preclude a finding that other provisions of the
8 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
9 must commence.

10 IT IS SO STIPULATED.

11
12 Dated: October 8, 2020

13 McGREGOR W. SCOTT
14 United States Attorney

15 /s/ VINCENTE A.
16 TENNERELLI
17 _____
18 VINCENTE A. TENNERELLI
19 Assistant United States Attorney

20
21 Dated: October 8, 2020

22 /s/ EDGAR H. SEVILLA III
23 EDGAR H. SEVILLA III
24 Counsel for Defendant
25 HUU TIEU

ORDER

IT IS SO ORDERED that the Status Conference is continued from October 14, 2020 to **March 24, 2021**, at **1:00 p.m.** before **Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: October 8, 2020

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE